

The below described is **SIGNED**.

Dated: May 10, 2005

William J. Thurman

WILLIAM T. THURMAN
U.S. Bankruptcy Judge



IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re:

Wallace Reed Bennett

Debtor.

Bankruptcy Number:

04-39412

Chapter 7

MEMORANDUM DECISION GRANTING LLOYD'S MOTION FOR RELIEF

FACTS:

On March 17, 2003, The Society of Lloyd's ("Lloyd's") obtained judgment in the United States District Court, District of Utah (the "District Court"), against the Debtor for £ 415,679.50, plus interest in the amount of 8 % per year after March 11, 1998, until payment in full of all accrued interest and all unpaid principal (the "Judgment"). As of March 3, 2005, the total amount that the Debtor owes on the Judgment is £567,097, which is equal to \$1,072,426.00 (U.S. Dollars). On June 28, 2004, the clerk of the federal court executed a Writ of Garnishment against the Debtor's interest brokerage account at Morgan Stanley¹ (the "Brokerage Account").

¹ As a joint owner with his wife, Debtor owns a one-half interest in the Morgan Stanley brokerage account identified as Account No. 124013054063.

On June 28, 2004, Lloyd's levied the Brokerage Account by serving the Writ of Garnishment upon Morgan Stanley. Evidence presented at the hearing shows that Debtor's one-half interest in the Brokerage Account has a value of approximately \$550,000.

PROCEDURAL HISTORY

On March 3, 2005, the Court conducted a continued evidentiary hearing on Lloyd's Motion for Relief from the Automatic Stay ("Motion for Relief") in room 376, United States Courthouse, 350 South Main Street, Salt Lake City, Utah, wherein Lloyd's sought permission to execute on the Brokerage Account as a secured creditor. Present at the hearing were Thomas Barton, Andrew Clarson, and Michael Zundel, counsel for Lloyd's; Gerald Suniville, counsel for the Debtor; David Bennett, a creditor; and Joel Marker, the Chapter 7 Trustee. On March 25, 2005, the Court issued a Memorandum Decision that granted the Motion for Relief in part to allow Judge Tena Campbell of the District Court to determine whether Magistrate Judge Nuffer had authority to issue the Writ of Garnishment against the Debtor's Brokerage Account, and thus whether Lloyd's holds a security interest in the Debtor's property.

On April 22, 2005, Judge Campbell entered an order determining that, pursuant to the Order of Reference dated November 19, 2003, and applicable statutes and rules cited therein, Magistrate Judge Nuffer had jurisdiction and authority to issue the Writ of Garnishment, and as such the Writ of Garnishment was valid and binding upon the parties in all respects.

ANALYSIS:

Lloyd's submits that it has a lien based upon the Writ of Garnishment that was entered by

the District Court. Judge Campbell's decision makes it clear that Judge Nuffer's Writ of Garnishment was "binding upon the parties in all respects." Because that Writ of Garnishment was binding, it created a lien on the Debtor's Brokerage Account in favor of Lloyd's.² Accordingly, the Court finds that Lloyd's is a secured creditor of the Debtor. The Court further finds that Lloyd's is not adequately protected.

CONCLUSION

Based upon the foregoing, the Court concludes that Lloyd's Motion for Relief should be granted. A separate order will follow.

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² See In re Max McNeeley, 5 B.R. 816, 819 (Bankr. D. Utah 1985).

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Service of the foregoing **MEMORANDUM DECISION GRANTING LLOYD'S**

MOTION FOR RELIEF will be effected through the Bankruptcy Noticing Center to each party listed below.

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